

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MICHAEL FLEMING,

Plaintiff,

**REPORT & RECOMMENDATION**  
**08 CV 3074 (ARR)(LB)**

- against -

JOHN MATTINGLY, MTONYA FLECHER,  
MICHELLE MULLINS, DANNY HERNANDEZ,  
JEFFREY AUGUSTIN, RONALD LIAUTAUD,  
LISA POLLONAI, GEORGE A. FLORES,  
KEECHIPETRONILLA SIMMON-EBUGHU,  
ANNETTE SPELLEN, DETECTIVE TOSI,  
SERGEANT MURPHY, DAVID CAMACHO,  
LENO ISABEL, EON THOMPSON, and  
NEW YORK CITY,

Defendants.

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**BLOOM, United States Magistrate Judge:**

Plaintiff filed the instant *pro se* action on July 28, 2008. (Compl.; Docket entry 1.)<sup>1</sup> The Court's records do not reflect that plaintiff has filed proof that defendant David Camacho has been served with the amended summons and complaint. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

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<sup>1</sup> On March 9, 2009, plaintiff amended his complaint. (Am. Compl.; Docket entry 10). On October 30, 2009, plaintiff amended his complaint for a second time. (Second Am. Compl.; Docket entry 27.) Plaintiff's second amended complaint no longer names Waheed Rasaki as a defendant but adds defendants City of New York, Tosi, and Murphy. On May 20, 2010, plaintiff filed a third amended complaint which adds defendants Camacho, Isabel, and Thompson.

Plaintiff has filed three amended complaints in this matter. On five occasions, the Court extended plaintiff's time to serve any newly named defendants and informed plaintiff that the Court would recommend dismissal of this action without prejudice if he failed to timely serve the defendants. (Docket Entries # 18, 23, 25, 26, 31). By Order dated May 20, 2010, the Court granted plaintiff permission, *nunc pro tunc*, to file his third amended complaint and to serve defendants Camacho, Fletcher, Murphy, Tosi, Isabel, and Thompson by June 17, 2010. (Docket entry 55.) The Court's Order explicitly stated that "the Court has extended deadlines for plaintiff on numerous occasions and this extension is final" and that "[i]f plaintiff does not file proof of service by June 17, 2010, the Court shall dismiss plaintiff's third amended complaint as to these defendants." (*Id.*) Plaintiff has failed to file proof of service or show good cause why service has not been made on defendant David Camacho.<sup>2</sup>

Accordingly, it is respectfully recommended that plaintiff's complaint as to defendant David Camacho should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

#### **FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002);

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<sup>2</sup> Although plaintiff has not filed proof of service for defendants Fletcher, Murphy, Tosi, Isabel, and Thompson, these defendants have answered the third amended complaint.

Small v. Sec'y of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn,  
474 U.S. 140 (1985).

SO ORDERED.

/S/

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LOIS BLOOM

United States Magistrate Judge

Dated: August 9, 2010  
Brooklyn, New York